

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARK BERMAN,  
Plaintiff,

v.

Case No. 2:14-cv-12720  
District Judge Gershwin A. Drain  
Magistrate Judge Anthony P. Patti

UNUMPROVIDENT CORPORATION,

*et al.*,

Defendants.

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**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT’S  
SECOND MOTION TO COMPEL (DE 34)**

This matter is before the Court for consideration of Defendant’s second motion to compel (DE 34), Plaintiff’s response (DE 36), and the parties joint status report (DE 42). Defendant’s motion came before the Court for a hearing on July 15, 2015. For the reasons stated on the record, Defendant’s motion is **GRANTED IN PART AND DENIED IN PART**. Specifically, the Court sustains Plaintiff’s objection to the form of Defendant’s request for production of documents #9, but will allow Defendant to cure the defect by the following process:

1. Before 5:00 p.m. on July 15, 2015, Defendant shall send to Plaintiff a modified first request for production of documents #9 (“Request #9”), by

email and fax, that conforms to the manner in which it requested the ADA code information during the claims process.

2. Plaintiff will have six weeks from the electronic receipt of that request in which to respond. If the request does not conform substantially to the manner in which Defendant initially requested the information during the claims process in a way that is problematic, Plaintiff may bring the issue to the Court for resolution.
3. Defendant is **ORDERED** to pay Plaintiff for 16 hours of his office manager's time spent in compiling the response to Request #9, which is reported to be \$22.50 per hour, totaling \$360. In addition, because Plaintiff's argument that responding to the modified request will cause additional disruption in his business was compelling, Defendant is further **ORDERED** to pay Plaintiff \$1,000 for this inconvenience. This \$1,360 payment must be tendered to Plaintiff or his counsel no later than **AUGUST 15, 2015**.

Both parties have requested that the Court award attorney fees for costs incurred in bringing or responding to the motion. Federal Rule of Civil Procedure 37 provides that, when a motion to compel is granted in part and denied in part, "the court *may* . . . after giving an opportunity to be heard, apportion reasonable

expenses for the motion.” Fed. R. Civ. P. 37(c) (emphasis added). After finding some degree of fault on both sides, the Court declines to do so here.

**IT IS SO ORDERED.**

Dated: July 15, 2015

s/Anthony P. Patti

Anthony P. Patti

UNITED STATES MAGISTRATE JUDGE

I hereby certify that a copy of the foregoing document was sent to parties of record on July 15, 2015, electronically and/or by U.S. Mail.

s/ Michael Williams

Case Manager to the

Honorable Anthony P. Patti